

***United States Court of Appeals
for the Second Circuit***



APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

77-1004

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UNITED STATES OF AMERICA,
Plaintiff-Appellee

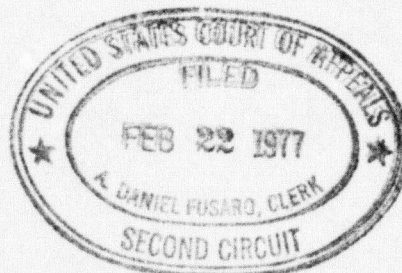
v.

Docket No: 77-1004

ANTONIO FLORES,
Defendant-Appellant

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P/S
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APPELLANT'S APPENDIX



STUART R. SHAW
ATTORNEY AT LAW
600 MADISON AVENUE
NEW YORK, N. Y. 10022

(212) 755-5645

PAGINATION AS IN ORIGINAL COPY

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UNITED STATES OF AMERICA	2	
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Certified copy of docket entries

Certified copy of indictment

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Burgen - Unsecured PMS in the amount of \$50,000

Seeger - Affidavit of Jeffrey Harris

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Kivern - Affidavit of Geoffrey Harris in opposition to motion for Reduction of Sentence

Rivera - Unaccrued PRB in the amount of \$75,000

Santana - Petition for Writ of Habeas Corpus Ad. Pres.

Santana - Motion for Discovery & Inspection, Bill of Particulars, & Severance, etc.

Alvarez - Magistrate's papers - docket no. 73-136

Surgeon - Ordered that the prisoner be remanded to the custody of the U.S. Marshal in lieu of bail

Rivera - Ordered that the prisoner be remanded to the custody of the U.S. Marshal in lieu of bail

Burgos - Certified copy of remand order

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

U.S.C.A. NO. 77-6715

-----X
United States of America

-v-

Antonio Flores

FILED
CLERK OF COURT
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CASE NO. 77-6715

JUDGE _____

-----X
1st SUPPLEMENTAL RECORD

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CKET
THE COURT
JUDGE BONSALE
A
1 73 CRIM. 19

TITLE OF CASE

THE UNITED STATES

ATTORNEYS

For U. S.: 264-6350

vs.

Jeffrey Harris, AUSA

for all 16 defendants

see page 2

For Defendant:

TWO COUNTS

DATE	PROCEEDINGS
1-5-73	Filed Indictment - 2 Warrants ordered as to certain defendants. Indictment ordered sealed. ----- Bonsal, J.
1-8-73	Bench Warrants issued.
1-23-73	Indictment ordered unsealed - H. Quinones- (Atty. present) Deft. pleads not guilty. 10 days for motions. Deft. ordered photographed and fingerprinted. Bail \$10,000.00 unsecured P.R.B. to be posted by 4 P.M. this date. D. Burgos- (Atty. present) pleads not guilty. 10 days for motions. Deft. ordered photographed and fingerprinted. Bail fixed at \$50,000.00 - Deft. remanded. H. Rivera- (Atty. present) pleads not guilty. 10 days for motions. Deft. ordered photographed and fingerprinted. Bail fixed at \$75,000.00 - Deft. remanded. G. Alvarez- (Atty. present) pleads not guilty. 10 days for motions. Deft. ordered photographed and fingerprinted. Bail fixed at \$50,000.00. - Deft. remanded. -- Metzner, J.

A6

DATE

PROCEEDINGS

UNITED STATES OF AMERICA

vs.

1) ✓ ANTONIO FLORES	ct. 1
2) ✓ JOSEPH LUCAROTTI	1
3) RALPH SANTANA	1
4) ✓ LILLIAN SANTANA	1
5) DELIA BURGOS, a/k/a "Dee"	1
6) HERMAN RIVERA	1
7) ✓ JEAN BATISTE CROCE, a/k/a JEAN BATI	1
8) ✓ SEPTARD EARL, a/k/a "LE PRISE"	1 <i>rolled 10/30/73</i>
9) HORACIO QUINONES	1 and 2
10) ✓ JOSEPH PARRO	1
11) ✓ JEAN CARDON	1
12) ✓ ANTHONY SECURA	1
13) GEORGE ALVAREZ	1
14) ✓ JOHN DOE, a/k/a ROGER DU BUIS	1
15) ✓ ROBERT MARTINEZ	1
16) ✓ FELIX OLIVIE	1

1-23-73 Delia Burgos- Filed notice of appearance by Martin J. Siegel, 250 W. 57th St., NYC 10019 (Phone 586-1410)

1-23-73 Quinones- Filed unsecured PRB in the amount of \$10,000.

1-31-73 Burgos- Bail set at \$50,000.00 P.R.B. secured and co-signed as indicated, by US Atty. Harris. Secured by deeds, deposits or bank deposits books by Mrs. Rizzo, Mrs. Morales, Mrs. Quedas and Mrs. Jefferson. 24 hours for posting security. Bonsal, J.

2-1-73 Burgos- Filed unsecured P.R.B. in the sum of \$50,000.00 co-signed by Maria Rizzo, Victoria Morales, Olga Jefferson and Dolores Quesada. (Bank Books, etc. receipted for U.S. Atty. by Helen Kowalski - Room 450)

2-2-73 Gr. Alvarez- Bail fixed at \$50,000.00 P.R.B. secured by \$5,000.00 Surety Bond and co-signed by Jean Jackson. Deft. Remanded in lieu of bail. Bonsal, J.

2-6-73 HERMAN RIVERA- Filed afdvt. of J. Harris, AUSA dtd. 2-6-73 in opposition to bail reduction.

DATE	PROCEEDINGS
2-5-73	HERMAN RIVERA- Filed affdvt. and notice of motion for reduction of bail.
2-2-73	RALPH SANTANA- Filed a ffdvt. of Jeffrey Harris, AUSA for a Writ of H.C. - ret. 2-14-73
2-2-73	ANTHONY SEGURA- Filed affdvt. of Jeffrey Harris, AUSA for a Writ of H.C. - ret. 2-14-73
2-5-73	H. QUINONES- Filed affdvt. and notice of motion for severance, to inspect Grand Jury Minutes, for a bill of particulars, discovery & inspection and to suppress.
2-8-73	H. Rivera, Bail \$75,000. to be secured by \$5,000. surety, Bond or proper- ty. Bonsal, J.
2-5-73	J.B. CROCE- A. FLORES- J. LUCAROTTI- J. MARRO- L. SANTANO, J. CARDON- JOHN DOE- B. MARI- R. MARTINEZ and F. OLIVIE- Court directs entry of not guilty pleas. R. SANTANA, D. BURGOS, H. RIVERA, H. QUINONES, A. SEGURA, G. ALVAREZ -- ordered marked off Cal. (Rm 110) Tyler, J.
2-9-73	Herman Rivera-Filed surety bond in the amount of \$75,000 secured by \$5,000.
2-22-73	R. Santana- Filed affidavit and notice of motion for discovery and inspection, bill of particulars, severance for trial from other defts. dismissing indictment etc.
2-14-73	Ralph Santana(Produced on Writ) (atty. present) Pleads notguilty. A. Segura-Produced on Writ(Atty. present) Pleads not Guilty. Bonsal, J.
2-26-73	G. Alvarez- Filed the following papers received from Mag. Baby: Docket entry sheet. Filed appearance bond \$50,000. P.R.B. Sec. by \$5,000. surety. (Public Service Mutual Ins. Co.)
2-2-73	Ralph Santana-Filed writ of habeas corpus with marshal's return satisfied 2-23-73 Bonsal, J.

DATE	PROCEEDINGS
2-27-73	D. Burgos- Filed remand dated 1-31-73 (2-1-73 deft. released upon posting bond)
2-27-73	H. Rivera- Filed remand dated 2-8-73 (2-9-73 made bail)
2-27-73	D. Burgos- Filed remand dated 1-23-73
2-27-73	H. Rivera- Filed remand dated 1-23-73
2-27-73	G. Alvarez- Filed remand dated 1-23-73
2-27-73	G. Alvarez- Filed remand dated 2-2-73 (2-5-73 released on bail)
3-22-73	Anthony Segura-Filed notice of appearance by Atty Henry K. Chapman 335 B'way N.Y.C. dtd. 3-13-73.
3-23-73	Antonio Flores-Filed warrant of arrest unexecuted dtd 1-8-73., attached copy of the indictment.
3-27-73	Flores-Filed affidavit of Aneta Seraphides French Interpreter.
3-27-73	Flores-Filed declaration of Edouard Rimbaud.
3-27-73	Flores-Filed affidavit of Edouard Rimbaud.
3-27-73	Flores-Filed affidavit of Michael A. Waniewski Special Agent.
3-27-73	Flores-Filed affidavit of AUSA Jeffrey Harris.
4-4-73	Flores-Filed affidavit and application to be determined by the Court for a adjournment.. by AUSA Jeffrey Harris.
4-18-73	QUINONES- Filed affdvt. of defendant requesting a bill of particulars and for certain statements and discovery in preparation for motions to sever, for separate trial and to suppress.
4-24-73	Horacio Quinones-Filed notice of appearance by J. Howard Rossbach, Esq., 500 Fifth Ave. New York, N.Y. 10036, (868-3120)
4-23-73	ANT. FLORES-Filed CJA 20 copy 5 appointing J. Howard Rossbach dtd. 3-22-73-Boneal, J.
5-30-73	Quinones- Filed Governments affdvt. in partial opposition to defendants motion for a bill of particulars, discovery & inspection.
5-30-73	QUINONES- Filed Governments bill of particulars.

DATE	PROCEEDINGS
6-12-73	Horacio Quinones-Filed affidavit and notice of motion for further Bill of Particulars, to dismiss first count of the indictment and for severing the trial of deft. Quinones on the first count from that of the other defts.
6-13-73	HORACIO QUINONES-Filed affdvt & notice of motion to suppress-Evt. date to be fixed.
16-13-73	ANTHONY SEGURA-Filed writ of habeas corpus with Marshal's return-Writ Satisfied
5-17-73--Ryan, J.	
6-21-73	Case adj'd to 10-22-73 for trial.
6-21-73	ANTHONY SEGURA - Case dismissed upon motion by counsel.....Bonsal, J.
7-5-73	Segura- Filed CJA appointment of Counsel dtd 3-14-73 Henry Chapman,Bonsal.
7-5-73	Segura-Mailed CJA copy I form 20 to the A.D. for payment. Bonsal,J.
10-9-73	Segura-Filed demand for speedy trial.
10-30-73	BERNARD MARI- Entered and filed Nolle Prosequi. Bonsal,J.
*10-19-73	A. FLORES- filed Govt's affdvt for writ of habeas corpus ad testificandum. ret: 10-29-73.
*10-19-73	R. SANTANA- filed Govt's affdvt for writ of habeas corpus ad pros. ret: 10-29-73.
* 10-15-73	HEPHAN RIVERA)-both deft- filed notice of appearance of atty, DELIA BURGOS) by Diller & Savakler, -Howard J. Diller, 299 Bway NYC 10007 347-5554.
10-30-73	Filed ORDER that Arthur L. Harrow, 43 Harrow St, NYC 10014, is added to the Panel of Attys for the sole purpose of representing the deft C. Alvarez in the trial of the above entitled action, etc. Metzner, J. mn
11-8-73	A. FLORES - filed writ of habeas corpus ad testificandum for Terry Paul Jones. Writ adj'd to 12-5-73. Weinfeld, J.
1-15-74	H. QUINONES- filed unsecured personal recognizance bond in the sum of \$10,000. pending appeal.
1-28-74	Filed transcript of record of proceedings, dated 1-17-73.

DATE	PROCEEDINGS
1-22-74	Filed truecopy of order dtd 10-19-73, for writ of habeas corpus ad pros. Writ satisfied. 1-14-74. Bonsal, J.
3/5/74	Filed deft H. Rivera's notice of motion re: exoneration of deft's bail.
3/5/74	Filed MEMO-END. on motion of deft H. Rivera to exonerat bail. " Motion to exonerate bail is granted. Bonsal, J. mn
4/30/74	J. Lucapotti, A. Flores, J. Santanastice, J. Maza, J. Cardan, J. Dora, R. Martinez, F. Olive.
	In all of these cases this case is still pending.
11/8/74	H. Quinones- filed CJA form 20 approval for payment of fees of attyl mailed notices by CJA Clerk. Bonsal, J.
1/17/75	Filed affdvt. for writ of habeas corpus ad testificandum for T. Jones 2/5/74 writ satisfied upon application of AUSA. Lasker, J.
01-14-76	Deft. Antonio Flores-produced on writ from Spain. Court directs plea of not guilty. Bail set at \$3,000,000. cont'd. deft. cont'd. in custody. Bonsal, J.
12-23-76	Filed Notice of Appearance of atty. for deft. Antonio Flores- by Howard J. Diller- Diller, Schmukler & Asness 345 Park Ave. N.Y.C. 10022 tele: (212) 371-1400.
12-27-76	Filed notice of motion for deft. A. Flores-re: precluding U.S. from introducing certain evidence., etc.
03-24-76	Filed OPINION # 44113-deft. Antonio Flores' motion to limit the Govt.'s introduction of certain evidence at trial, etc... is disposed of accordingly. Bonsal, J. m/n
04-08-76	Filed deft. A. Flores' notice of motion re: reargument and/or a formal hearing on issue of introduction of evidence by prosecution at trial and motion to dismiss for lack of jurisdiction.
04-08-76	Filed deft. A. Flores memo of law re: support motion for reargument, etc.

DATE	PROCEEDINGS
04-13-76	A.FLORES-Filed Speedy Trial Waiver.
04-16-76	A.Flores-Filed notice of motion & affidavit for dismissal of indictment ret.4-19-76.
04-19-76	A.Flores- Filed Govt's Memorandum of Law in support of admitting evidence of events prior to Sept.3,1970.
04-14-76	A.FLORES-Filed Memo End. on motion of 4/8/76. Motion denied after argument. So Ordered. Bonsai, J.
04-18-76	*24 hours notice of record of proceedings
04-20-76	A.FLORES-Filed Memo End. on motion of 4/16/76. Motion denied after oral argument. So Ordered. Bonsai, J. m/n
04-22-76	Filed Govt.'s affdvt. re: witnesses who will appear at the trial.
04-23-76	Filed true copy of order of the U.S. C.A. that the deft. A. Flores petition for a writ of mandamus having been filed together with a motion for a stay is denied. Clerk m/n pro-se
04-28-76	Filed Govt's motion re: stay trial of the case of Antonio Flores ret: 5-3-76.
04-28-76	Filed deft. A. Flores' notice of appeal from a pre-trial oral decision, rendered by Judge Bonsai excluding certain evidence from Flores' upcoming trial which the court viewed as excluded by an Extradition Treaty between sought to introduce by way of a motion filed with the aforesaid court on 4-19-76, mailed copies.
05-03-76	Filed memo-end. on motion docketed 4-28-76-Motion granted after argument and after no opposition. Trial date scheduled for 6-2-76. Bonsai, J. m/n
04-04-76	Filed Govt.'s memo. of law re: opposition to deft. Flores' motion to limit evidence, etc.
04-04-76	Filed transcript of record of proceedings, dated 4-22-76.
04-04-76	Filed transcript of record of proceedings, dated 4-19-76.
05-05-76	Filed notice that the record on appeal has been certified and transmitted to the U.S.C.A.

DATE	PROCEEDINGS
08-17-76	Jury trial begun before Judge Bonsal. Deft. Antonio Flores only. Deft. presently in custody at M.C.C. after being produced on a writ from Spain. Interpreter Joelle McCall sworn. (French)
08-18-76	Jury trial contd. before Judge Bonsal.
08-19-76	Trial cont'd.
08-20-76	Trial cont'd.
08-23-76	Trial cont'd.
08-24-76	Trial cont'd.
08-25-76	Trial cont'd. Suppression hearing held. Granted in part and denied in part. Govt. rests. Deft's. motion to dismiss is denied. Deft. rests. Summations begun and concluded.
08-26-76	Deliberations begin. Jury verdict finds deft. Antonio Flores guilty as charged. P.S.I. ordered. Sentence adj. to 10-7-76. Deft. remanded to Bonsal, J.
08-27-76 m	Filed true copy of order of the U.S.C.A. that deft.'s A. Flores' notice of appeal from order of 4-19-76 that the order of the District Court is reversed. Subject to proper jury instructions the relevant pre-Sept. 1970, acts and statements of the deft.-appellee Flores and of his alleged co-conspirators are admissible to the extent that they may demonstrate the existence of a conspiracy continuing into the time period fixed by the High Court of Spain and establish the intent and purposes of the conspirators during that period. A detailed opinion will follow. Clerk m/n
09-10-76 m	Filed writ for habeas corpus ad testificandum for Horanio Quinones 9-9-76 writ satisfied Haight, J.
09-10-76 m	Filed affdvt. for writ of habeas corpus ad testificandum for Antonio Segura writ satisfied 9-9-76 Haight, J.
09-22-76 A	Filed deft. A. Flores' notice of motion re: judgment of acquittal, etc. ret: 10-1-76.
10-4-76 A	Filed writ of H/C Ad Test. with marshals return writ satisfied 9-9-76.
11-03-76 A	Filed transcript of record of proceedings, dated: June 14, 1976, August 1, 7, 18, 19, 20, 23, 1976.
11-03-76 m	Filed transcript of record of proceedings, dated: August 24, 25, 26, 1976.
11-03-76	Filed A. Flores' notice of appeal from judgment of 11-3-76. Mailed copies to deft. & US Atty.

A TRUE COPY

RAYMOND F. BUECHARDT, Clerk

Deputy Clerk

JH:art

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

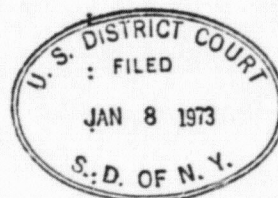
ANTONIO FLORES,
JOSEPH LUCAROTTI
RALPH SANTANA
LILLIAN SANTANA
✓ DELIA BURGOS, a/k/a "Dee"
✓ HERMAN RIVERA,
JEAN BAPTISTE CROCE, a/k/a JEAN BATI
BERNARD MARI, a/k/a "LE FRISE"
✓ HORACIO QUINONES,
JOSEPH MARRO,
JEAN CARDON,
ANTHONY SEGURA,
✓ GEORGE ALVAREZ,
JOHN DOE, a/k/a ROBER DU BUIS,
ROBERT MARTINEZ,
FELIX OLIVIE,

Defendants.

73 CRIM. 19

: INDICTMENT

: 73 Cr.



The Grand Jury charges:

1. From on or about the 1st day of January, 1968, and continuously thereafter up to and including the 30th day of April, 1971, in the Southern District of New York, ANTONIO FLORES, JOSEPH LUCAROTTI, RALPH SANTANA, LILLIAN SANTANA, DELIA BURGOS, a/k/a "DEE", FELIX OLIVIE, HERMAN RIVERA, JEAN BAPTISTE CROCE, a/k/a JEAN BATI, BERNARD MARI, a/k/a "LE FRISE", HORACIO QUINONES, JOSEPH MARRO, JEAN CARDON, ANTHONY SEGURA, GEORGE ALVAREZ, JOHN DOE, a/k/a ROGER DU BUIS, ROBERT MARTINEZ, the defendants, and JEAN DIEUPART, a/k/a JEANNOT, JEAN MARIOLE, JACQUES BEC, JEAN PIERRE BUFFAT, ETIENNE MOSCA, a/k/a "PIERROT," FERNAND CHAFFARD, FRANCOISE BIZARD, MARCELLA ASFEZ named herein as co-conspirators and not defendants, and others to the Grand Jury known and unknown, unlawfully,

A14

13 continued

start

4. During July 1969 ANTHONY SEGURA left the garage of the Edison Hotel, New York, New York, driving a car containing 27 kilograms of heroin.

5. During July 1969 ANTHONY SEGURA arrived at the New York Hilton Hotel, New York, New York with approximately \$200,000.00.

6. During July 1969 ANTHONY SEGURA arrived in the vicinity of Madison Square Garden, New York, New York with approximately 100,000.00.

7. During September 1969 ANTHONY SEGURA entered St. Patricks Cathedral with approximately \$150,000.00.

8. During October 1969 ANTHONY SEGURA arrived at the New York Hilton Hotel with approximately \$120,000.00.

9. During November 1969 ROBERT MARTINEZ arrived in the vicinity of the New York Hilton Hotel, New York, New York with approximately \$120,000.00.

10. On or about April 12, 1971 in the vicinity of the New York Hilton Hotel, New York, New York, ANTHONY SEGURA received the shipping papers and parking receipt for a car containing 93 kilograms of heroin.

11. On or about April 27, 1971 ETIENNE MOSCA left the Abbey Victoria Hotel, New York, New York with a partial payment of approximately \$300,000.00 of \$981,000.00 due for delivery of the 93 kilograms of heroin.

(Title 21, United States Code, Sections 173 and 174)

SECOND COUNT

The Grand Jury further charges:

From in or about March 1969 through July 1969 in the Southern District of New York, HORACIO QUINONES, the

wilfully and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 173 and 174 of Title 21, United States Code.

2. It was part of said conspiracy that the said defendants unlawfully, wilfully and knowingly could receive, conceal, buy, sell and facilitate the transportation, concealment and sale of a quantity of narcotic drugs, the exact amount and nature thereof being to the Grand Jury unknown, after the said narcotic drugs had been imported and brought into the United States contrary to law, knowing that the said narcotic drugs had been imported and brought into the United States contrary to law in violation of Sections 173 and 174 of Title 21, United States Code.

3. It was further a part of said conspiracy that the said defendants unlawfully, wilfully and knowingly would fraudulently import and bring narcotic drugs into the United States contrary to law in violation of Sections 173 and 174 of Title 21, United States Code.

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

1. On or about August 5, 1968, LILLIAN SANTANA arrived in the vicinity of the Bronx Park Motel, 2500 Crotona Avenue, Bronx, New York.

2. On or about January 12, 1969 LILLIAN SANTANA and DELIA BURGOS, a/k/a "DEE" arrived at the Commodore Hotel, New York, New York.

3. During May 1969 ANTONIO FLORES arrived in the vicinity of the New York Hilton Hotel, New York, New York with \$150,000.00.

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defendant, unlawfully, wilfully and knowingly did introduce and attempt to introduce into or upon the grounds of a Federal penal and correctional institution, to wit, Federal Detention Headquarters 427 West Street, New York, New York, and take and attempt to take and send therefrom letters and other communications contrary to rules and regulations promulgated by the Attorney General, to wit, Title 28, Code of Federal Regulations Section 6.1.

(Title 18, United States Code, Section 1791)

Howard V. Campbell
FOREMAN

Whitney North Seymour, Jr.
WHITNEY NORTH SEYMOUR, Jr.
United States Attorney

CHARGE OF THE COURT

Judge Dudley B. Bonsal

THE COURT: Mr. Foreman, as you are, Mr. Riess, by virtue of occupying the first chair, and ladies and gentlemen of the jury, first of all I would like to join with the lawyers in thanking you very much for the careful attention which you have paid to the evidence during this trial. It is difficult where you have interpreters, it slows it up and makes it more difficult, but I noticed that you followed the testimony very carefully.

I also want to tell you that I appreciate the sacrifices which I know each of you has had to make in your own personal lives so you could serve in this very important public function of being on a federal jury.

I know that you will bear with me and give me the same degree of attention which you have shown throughout the trial, so that you will understand the principles of law which apply to this case.

You remember when we started the trial I told you that it was your duty to weigh the evidence calmly and dispassionately, without any sympathy, and without any prejudice, either with respect to the Government or with respect to the defendant, Mr. Flores.

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2 I told you at that time that everyone is entitled
3 to an absolutely fair and impartial trial regardless of
4 his occupation or his station in life.

5 I also told you at the outset the subject of
6 this trial involved narcotic drugs, and you told me at
7 that time that the subject matter would not prevent
8 you in any way from reaching a completely fair and
9 impartial verdict. And also as I told you, ladies and
10 gentlemen, your verdict here must be based solely on the
11 testimony which you heard from that witness chair, and on
12 the exhibits which were received during the course of
13 the trial and on nothing else at all.

14 Then I told you, if you recall, that under our
15 system of law the Judge has the duty to set forth the
16 rules of law which apply to the case and as to the rules
17 of law you must follow my instructions, but on the other
18 hand, you, the jury, are the sole judges of the facts. It
19 is not what the lawyers may say a witness testified to
20 or what they may say a document contains or shows,
21 what I might say on these subjects. It is what you, the
22 jury, recall and decide.

23 Then you remember I told you also when we started
24 out that during the trial I will have conversations with
25 one or the other of the lawyers, and indeed I did, I

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sustained objections and I overruled objections, and I told you then and I repeat now, that these conversations are of no concern of yours. They deal with matters of law, administrative proceedings. I asked you then to pay no attention to them; and ladies and gentlemen, draw no inference from anything I might have said during this trial that might lead you to think that I favor one side or the other here. Of course I do not. That is not my function. That is yours.

Throughout my charge, ladies and gentlemen, I will instruct you that you may not convict the defendant, Mr. Flores, unless and until you are satisfied that the Government has proven each element comprising the crime charged beyond a reasonable doubt. And what do we mean by beyond a reasonable doubt? Well, I think the words suggest the answer. It is a doubt based on reason, a doubt which a reasonable man or woman might entertain. But a reasonable doubt is not a fanciful doubt, it is not an imaginary doubt, it is not a doubt which a juror might conjure up in order to avoid performing an unpleasant task. It is a reasonable doubt. It is a doubt which arises in a juror's mind because of something in the evidence or the absence of evidence. It is the kind of doubt which would cause a reasonable man or woman in

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2 a more serious and important matter in his or her own life
3 to hesitate to act, and the burden is on the Government
4 to prove the guilt of the defendant beyond a reasonable doubt.

5 Now the Government need not prove the defendant's
6 guilt beyond all possible doubt. If that were the
7 rule, few people, however guilty they might be, would ever
8 be convicted. In this world of ours, it is practically
9 impossible for one to be absolutely and completely
10 convinced of any controverted fact which by its nature
11 is not susceptible to mathematical precision or to
12 mathematical certainty, so the law is that the Government
13 must prove the defendant's guilt beyond a reasonable doubt,
14 not beyond all possible doubt.

15 When I review the indictment with you, ladies
16 and gentlemen, I remind you as I told you at the outset,
17 that the indictment is merely the charge. The indictment
18 is a way by which the Government brings into court
19 individuals who it claims have violated the law. The
20 indictment is not any evidence of the guilt of this
21 defendant and the indictment is not to detract in any
22 degree from the presumption of innocence with which the
23 law surrounds the accused until his guilt is proved.

24 This presumption of innocence remains with the
25 defendant, Mr. Flores, throughout the trial, and applies

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2 to each of the essential elements of the crime charged,
3 and this presumption of innocence continues unless and
4 until you, the jury, are satisfied the Government has proved
5 the guilt of the defendant beyond a reasonable doubt.

6 The defendant, Mr. Flores, has entered a plea
7 of not guilty in this case, and in doing so he has put in
8 issue every essential element of the crime charged, and
9 if the Government has proved to you the defendant's guilt
10 beyond a reasonable doubt, it is your duty to find the
11 defendant not guilty.

12 Yesterday, ladies and gentlemen, you heard the
13 testimony reviewed in considerable detail by the lawyers,
14 and I don't intend to review all the evidence again.
15 However, I thought it might help you with your own
16 recollection if I reviewed briefly who testified here and
17 reviewed some of the contentions as I understand them.

18 I am doing this only for the purpose of trying
19 to help you refresh your own recollection because it is
20 your recollection and not mine that controls.

21 Now as I recall it, the first witness was
22 Edouard Rimbaud, the gentleman who testified through an
23 interpreter. You remember he told us about his activity
24 in the narcotics traffic in France and in Montreal and
25 about other matters including some meetings with the

defendant Mr. Flores, as I recall it, in New York and in Paris.

The next witness was the French Police inspector, whose name as I recall it was Jean Ravanello who testified about some hotel records in Paris.

Then we had Terry Paul Jones. You remember Terry Paul Jones? He testified about activity in New York and going to Boston. As I recall it he went to Boston to pick up some heroin sometime in the fall of 1968.

Then we had Angel Morales who told us about having some kind of a restaurant business with Mr. Flores and about taking a trip to Paris in the summer of 1968.

Then we had Edmond Taillet, another Frenchman who also testified through an interpreter. He testified about his activity in the narcotics traffic in France and Montreal and in New York and also about meetings he said he had with the defendant, Mr. Flores.

Then there was Kurt Bass, you remember Kurt Bass? He was the automobile salesman. He testified about having purchased a blue French Citroen car from a young couple in May 1971.

Then we had an agent from the Drug Enforcement Administration, Mr. Prezioso, who told us he inspected the blue Citroen, found some white powder on top of the

gas tank, you remember that. And he was followed by Dr. James Chap who was formerly a forensic chemist with the United States Customs Laboratory, who told us about certain tests that were made with respect to this white powder in the blue Citroen which he said, I think, were made on May 10, 1971.

Then we had two Spanish police inspectors, Inspector Lara and Inspector Cano. As I recall it they testified about some surveillance in March 1973 of Mr. Flores' hotel room in Barcelona, Spain and the subsequent detention of Mr. Flores.

And finally, the Government called Agent O'Neill of the Drug Enforcement Administration who testified about a conversation he had with the defendant when he was returning with the defendant on a plane from Spain to New York in January 1976.

Then the defendant called two witnesses. The first one I think was a Mr. Alvarez, do you remember, who talked about an earlier trial in which Taillet had testified and he indicated that Taillet had changed his testimony and couldn't really identify him, and he was acquitted.

Then the last witness was Mr. Segura who testified, as I recall it, about a conversation with Flores in Paris

in 1971.

And as to contentions, and here of course, it is your recollection that controls. It is my recollection the Government contends that the Defendant Flores was a member of a conspiracy to import heroin from France into the United States between January 1968 and April 30, 1971.

Based on Rimbaud's testimony, the Government contends that Mr. Flores met with Rimbaud in 1968 in New York, and that Flores later went to Paris in the summer of '68 to purchase some heroin through Rimbaud, that the heroin was late in coming, as I recall it, that Flores only received some 2 kilos.

Then also on the basis of Rimbaud's testimony, the Government contends that Rimbaud sought out Flores in New York in early 1969 and told Flores that he had a new source of heroin in France.

I think these were the Corsicans, as they are called, as I remember; and that Flores agreed at that time to purchase some 12 kilos of heroin for \$120,000, and the heroin was going to be smuggled into Montreal in amplifiers. You remember the talk about amplifiers.

Then on the basis of Rimbaud's testimony, the Government contends that Rimbaud returned to New York in March 1969 to arrange a sale with Flores of approximately

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2 23 kilos of heroin, that before the arrangements
3 could be completed Rimbaud said he was arrested.

4 Also based on Rimbaud's testimony, the Government
5 contends that after Rimbaud's arrest, Flores sent a lawyer
6 named Quinones to visit Rimbaud in jail, and that Quinones
7 later found out the name of Rimbaud's French supplier,
8 I think again this refers to the Corsicans.

9 The Government contends that Flores went to meet
10 the Corsicans in France in June of 1969, and that Flores
11 met with Taillet in Paris at about this time.
12 The Government contends, and this I believe is on Taillet's
13 testimony, that Taillet and Flores later met in New York
14 in June of '69 at the Hilton Hotel, and that Flores
15 paid Taillet \$150,000 in cash.

16 And again on Taillet's testimony, the Government
17 contends that approximately 27 kilos of heroin were later
18 smuggled into Montreal from France in a car belonging
19 to Noella Richard. Remember the story about meeting
20 the lady in Montreal who had a car. And the car was driven
21 to New York where, by arrangement with Flores, the heroin
22 was delivered to a house in the Bronx. I think this was
23 in July 1969, as I recall.

24 And then on the basis of Taillet's testimony,
25 the Government contends that there was another shipment
of heroin from France to Montreal, in a car driven by

1 Jeannette LaMarque, and that approximately 50 kilos of
2 heroin were delivered in New York to Anthony Segura and
3 that Segura paid Taillet some \$150,000 in September of
4 1969. I think this took place in St. Patrick's Cathedral,
5 if I remember the testimony about St. Patrick's Cathedral.
6

7 Finally, again based on Taillet's testimony,
8 the Government contends that in April 1971, this blue
9 Citroen car, which contained approximately 93 kilos
10 of heroin arrived in New York driven by this fellow
11 Etienne Mosca, and that it had come from, as I recall it,
12 from France to Puerto Rico to Mexico and then was driven
13 up here; and as I recall it, according to Taillet's
14 testimony, Flores paid some \$370,000 for this heroin,
15 the money being in a briefcase, and I think there was
16 testimony also by Taillet that Mosca delivered the key
17 and the parking card or parking certificate in
18 connection with this deal.

19 Now, of course, the defendant denies all of
20 these contentions. He does not deny that there might not h
21 have been a conspiracy to import heroin during this period,
22 but he denies absolutely that he had anything to do with it,
23 and he denies particularly that, if there was a conspiracy,
24
25

that he was a member of it at any time between September 3, 1970 and April 30, 1971. I will explain the importance of those dates in a few minutes.

And the defendant contends also that the testimony of Rimbaud and Taillet is false and that they gave that testimony purely to help themselves because of their own involvement.

Now the statutes involved in this case, ladies and gentlemen, are Sections 173 and 174 of Title 21 of the United States Code. Section 173 provides in relevant part, and I quote it:

"It is unlawful to import or bring any narcotic drug into the United States except that such amounts of crude opium as the Commissioner of Narcotics finds to be necessary to provide for medical and legitimate uses only may be imported and brought into the United States under such regulations as the Commissioner of Narcotics shall prescribe, but no crude opium may be imported or brought in for the purpose of manufacturing heroin."

Now, ladies and gentlemen, you remember there was a lot of testimony during this trial regarding the importation of heroin or heroin hydrochloride in the United States; and if you find beyond a reasonable doubt

that the purpose of the conspiracy, if there was a conspiracy, was to import heroin hydrochloride from France, then I do instruct you that heroin hydrochloride is a narcotic drug as used in the statute I just read to you.

Then Section 174 provides in relevant part, quote:

"Whoever fraudulently or knowingly imports or brings any narcotic drug into the United States or any territory under its control or jurisdiction, contrary to law, or conspires," -- and that is this case -- "or conspires to do so, -- "or conspires to commit any of such acts in violation of the laws of the United States, is guilty of a crime."

Now turning to the indictment, ladies and gentlemen, and I remind you again an indictment is merely a charge, it is not evidence of the guilt of the defendant, Mr. Flores, the indictment reads, "The grand jury charges from on or about the first day of January 1968 and continuously thereafter up to and including the 30th day of April 1971," nothing magic about those dates but I think the dates which you heard testimony came within that framework -- "in the Southern District of New York" -- the Southern District of New York includes Manhattan,

includes the Bronx, and there was testimony about both those places -- "Antonio Flores, Joseph Lucarotti, Ralph Santana, Lillian Santana, Delia Burgos, also known as Dee, Felix Olive" -- "Olivie I guess it is --"Herman Rivera, Jean Baptiste Croce also known as Jean Bati, Bernard Mari, also known as LeFrise, Horatio Quinones, Joseph Marro, Jean Cardon, Anthony Segura, George Alvarez, John Doe also known as Roger DuBuis, Robert Martinez, defendant and Jean Dieupart also known as Jeannot, Jean Hariole, Jacques Bec, Jean Pierre Buffat, Etienne Mosca also known as Pierrot, Fernand Chaffard, Francoise Bizard, Marcella Asfez, named herein as co-conspirators and not defendants, and others to the grand jury known and unknown, unlawfully, wilfully and knowingly combined, conspired, confederated and agreed together, and with each other, to violate Sections 173 and 174 of Title 21 United States Code," which was the statutes I read to you, and I have mentioned conspire, which is mentioned in the statute.

"Two. It was part of said conspiracy that said defendants knowingly, wilfully and unlawfully would receive, conceal, buy, sell and facilitate the transportation, concealment and sale of a quantity of narcotic drugs, the exact amount and nature thereof being to the grand jury unknown after the said narcotic drug had been imported

1 and brought into the United States contrary to law,
2 knowing that the said narcotic drugs had been imported
3 and brought into the United States contrary to law in
4 violation of Sections 173 and 174 of Title 21, United
5 States Code.
6

7 "Three. It was further a part of said conspiracy
8 that the said defendants unlawfully, wilfully and knowingly
9 would fraudulently import and bring narcotic drugs
10 into the United States contrary to law in violation of
11 Sections 173 and 174 of Title 21 of the United States
12 Code."

13 Now, ladies and gentlemen, you have observed
14 in this reading of the indictment that there are a lot of
15 names but you are considering only the guilt or innocence
16 of the defendant Mr. Flores, and you must draw no inferences,
17 favorable or unfavorable to Mr. Flores, by reason of the
18 names of all these other people, some of whom you heard
19 mentioned in the course of the testimony at this trial.

20 You also heard during the trial that Mr. Flores
21 was returned from Spain, I think the word extradition was
22 mentioned, and indeed he was. He was extradicted from
23 Spain, and under the terms of the extradition, you may
24 only convict Mr. Flores if you find here there was a
25 conspiracy, and that he was a member of that conspiracy

2 during the period September 3, 1970 to April 30, 1971.

3 I will instruct you in a few minutes as to the
4 elements that you must find beyond a reasonable doubt
5 before you can find Mr. Flores was guilty of conspiracy
6 here, but I want to emphasize that you may find him
7 guilty only if you find beyond a reasonable doubt that
8 there was a conspiracy here, and that the conspiracy
9 continued after September 3rd, from and after September 3,
10 1970, and to April 30, 1971 and that Mr. Flores was
11 a member of that conspiracy during the period from
12 September 3, 1970 to April 30, 1971.

13 Now as I recall it, on the contentions here,
14 this really involves Mr. Taillet's testimony. Remember
15 he testified that in April 1971 he came to New York
16 to meet this fellow Etienne Mosca who was driving the
17 blue Citroen with 93 kilos of heroin; and according to
18 Taillet, he met Mosca in Taillet's hotel room in early
19 April after they failed to locate each other in Madison
20 Square Garden, you remember the number of bars, they
21 couldn't find each other.

22 And then according to the Government's contentions,
23 and this is the testimony of Mr. Taillet, Taillet went to
24 the Hilton Hotel to meet Segura or Flores on April 12th or
25 13th, 1971, and Taillet met Segura at the Hilton Hotel

1 according to Taillet, and gave Segura the keys and
2 a parking ticket to a blue Citroen which was the car which
3 was parked in the hotel garage.
4

5 And the next day, Taillet testified, Segura
6 took Taillet to an apartment somewhere where they met with,
7 according to Taillet, the Defendant Flores, and I remember
8 there was some testimony about the change in Mr. Flores'
9 physical appearance, and he testified that they had dinner
10 and I think he said he was offered a marijuana cigarette,
11 and something about being stoned after that.

12 You remember that. And at some time after this
13 meeting Segura gave Taillet an attache case with some
14 money, I think the figure \$370,000 was mentioned, in partial
15 payment for the heroin in the Citroen car.

16 Then there was the testimony of Bass which I
17 reviewed with you, the automobile salesman who said
18 he bought the blue Citroen car, and then the testimony
19 of Prezioso which I also reviewed with you about the
20 powder on the gas tank; and then the testimony of
21 Dr. Chap.

22 That is my recollection of the testimony during
23 this important period, September 3, 1970 to April 30, 1971.

24 Before you can find the defendant guilty of the
25 crime of conspiracy with which he is charged here,
you must find that the Government has proved beyond a

reasonable doubt each of the following three elements:

First, that there was a conspiracy between two or more people named in the indictment or who testified at the trial to import heroin from France into the United States; and that this conspiracy continued after September 3, 1970, and not later than April 30, 1971.

Two: That the defendant Antonio Flores, unlawfully, knowingly, and wilfully became a member of the conspiracy, knowing that its unlawful purpose was to import heroin into the United States, and that he was a member of that conspiracy, if you find that there was one, that he was a member of that conspiracy, after September 3, 1970.

Third, that at least one of the overt acts set forth in the indictment -- and I will read them to you in a minute -- was committed by one of the members of the conspiracy, not necessarily the defendant, and that the overt act was committed in furtherance of the conspiracy.

Going back to the first element which the Government must prove beyond a reasonable doubt, was there a conspiracy here. Now what is a conspiracy. A conspiracy is a combination or partnership, if you will, of two or more people, to violate the law.

Perhaps you might think of it as a partnership

in crime, partnership to perform an illegal purpose;
and the conspiracy charged here is a partnership in crime
to violate these statutes I read to you by importing heroin
from France to the United States.

Now, of course, the Government need not prove
that there was any formal agreement between the conspirators
giving its objectives or how it was to be carried out.
People who conspire to violate the law are hardly likely
to put their agreements in writing, but in order to find
a conspiracy here the evidence must show that two or more
persons in some way came to a mutual understanding for the
purpose of accomplishing the plan knowing that its purpose
was to import heroin into the United States illegally.

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The evidence need not show that the purpose of the conspiracy was accomplished or that the conspiracy was successful. The evidence need only show that its members came to an understanding for the purpose of unlawfully importing heroin.

And if you find there was a conspiracy here, it is presumed to continue as to each member of the conspiracy until either its object had been accomplished or that member is shown to have affirmatively withdrawn from the conspiracy.

So as to the first element, ladies and gentlemen, was there a conspiracy here, was there a conspiracy to import heroin into the United States.

Turning to the second element, if you find that there was such a conspiracy, then the Government must prove beyond a reasonable doubt that the defendant, Mr. Flores, was a member of that conspiracy, and here in determining whether Mr. Flores was a member of the conspiracy, consider the evidence which you heard during the trial as to his own acts, his own statements, his own conduct, and the evidence of the acts, statements, conduct of others which you find bear on the question of whether Mr. Flores was a member of the conspiracy.

You must not infer membership in a conspiracy

1
2 merely because Mr. Flores may have known or associated
3 with or even been related to someone else whom you think
4 was a member of the conspiracy. You may not infer member-
5 ship in a conspiracy because Mr. Flores may have known that
6 others were engaged in a conspiracy to import heroin
7 into the United States.

8 On the other hand, it is not necessary that
9 Mr. Flores should have had direct contact with others
10 whom you feel to have been members of the conspiracy.

11 In determining whether Mr. Flores was a member of the
12 conspiracy, you must find that he knowingly and wilfully
13 participated in it, knowing that its unlawful purpose was
14 to import heroin into the United States, that he in some way
15 sought to make the conspiracy his own, he thought in some
16 way to make the venture successful.

17 And here you recall that during the trial I
18 received testimony and some exhibits subject to connection.
19 You remember, I mentioned "subject to connection." For
20 example, you remember that Rimbaud started testifying
21 about his correspondence with Lucarotti. Well, there
22 is no evidence that Mr. Flores was present when that was done.

23 Then there was testimony about conversations
24 in Marseilles with the sources, Corsicans, and whatnot.
25 As I recall it, there was no evidence that Flores was present.

at those; and that was why a good deal of this evidence I received subject to connection.

And what did I mean by "subject to connection?" The connection I had in mind was, first, proof there is a conspiracy here, and second, proof that the defendant Flores was a member of the conspiracy, because you will recall I told you that a conspiracy is like a partnership in crime, so that a member of the conspiracy is responsible for the acts done by any other members of the conspiracy which were done in furtherance of the conspiracy.

This is true regardless of whether or not that member participated in the particular act.

Of course the guilt of a conspirator is not measured by the duration or extent of his participation. It is not measured by whether his role is a major one or a minor one. A member of a conspiracy is equally guilty if you find that indeed he was a member.

So those are the first two elements here, Ladies and gentlemen; was there a conspiracy, and if there was, was Mr. Flores a member of it?

If the Government has not proven these two elements beyond a reasonable doubt, of course it is your duty to find the defendant not guilty.

On the other hand, if you find that there was

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a conspiracy here, and that the defendant was a member of the conspiracy, then you reach the third element which the Government must prove beyond a reasonable doubt, and that is that one or more of the members of the conspiracy committed at least one of the overt acts charged in the indictment in furtherance of the conspiracy.

That is the third element, an overt act.

What is an overt act? An overt act is simply a step, some action taken to further the conspiracy. It may be a conversation, it may be a meeting, it may be traveling, it may be anything at all. The overt act need not be a crime in and of itself, and as I told you it is not necessary that Mr. Flores participated in it. It is sufficient if you find that the Government has proven beyond a reasonable doubt that at least one of these acts was committed by a member of the conspiracy, and that it was committed in furtherance of the conspiracy.

And in the indictment, ladies and gentlemen, there are two overt acts which you will consider. There were others mentioned here and you need not pay any attention to them, but there were only two that were mentioned during this period September 3, 1970 through April 30, 1971.

The indictment reads, "In pursuance of said conspiracy and to effect the objects thereof, the following

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overt acts were committed in the Southern District of New York."

The first one is: "On or about April 12, 1971, in the vicinity of the New York Hilton Hotel, New York, New York, Anthony Segura received the shipping papers and parking receipt for a car containing 93 kilograms of heroin."

I think this refers to Taillet's testimony about how he testified that he delivered the keys and parking ticket to Segura.

The second overt act:

"On or about April 27, 1971, Etienne Mosca left the Abbey-Victoria Hotel, New York, New York, with a partial payment of approximately \$300,000 of \$981,000 due for delivery of the 93 kilograms of heroin."

Here, you recall, this again refers to Taillet's testimony. I think he testified about a meeting with Flores and about the money being in a briefcase or satchel or something like that.

Now, as to the overt acts, ladies and gentlemen, the Government has the burden of proving beyond a reasonable doubt that at least one of these two things, not both, just one of them, one of them actually happened, and that the act was committed in furtherance of the conspiracy that

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2 is charged in the indictment.

3 So, summarizing, ladies and gentlemen, the
4 Government must prove beyond a reasonable doubt, first,
5 that there was a conspiracy; second, that the defendant
6 Flores knowingly, wilfully joined the conspiracy, knowing of
7 its unlawful purpose, and continued to be a member after
8 September 3, 1970.

9 And third, that at least one of these two
10 overt acts which I read to you was committed in furtherance
11 of the conspiracy.

12 You remember, ladies and gentlemen, I read
13 the indictment to you, that charges the defendant with
14 acting unlawfully, wilfully and knowingly. In other words,
15 the essential element here with respect to Mr. Flores was
16 his intent, knowledge and intentions at the time. Did
17 he have a criminal intent? Did he act knowingly, wilfully
18 and unlawfully?

19 How do you determine that? Well, of course
20 an act is done knowingly and wilfully if it is done voluntar-
21 ily and purposely. An act is done wilfully, knowingly
22 and unlawfully if it is done with an evil motive or purpose
23 such as a conspiracy to import heroin into the United
24 States.

25 But an act is not done wilfully, knowingly or

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2 unlawfully if it is done by mistake, by inadvertence,
3 or by other innocent reason.

4 Obviously, it is impossible to prove exactly
5 what Mr. Flores knew or what his intentions were on the
6 occasions about which you heard testimony. After all,
7 we can't look into his mind and see what knowledge he had
8 at the time to determine his specific intentions. But
9 these are matters which you, the jury, must determine
10 from a careful consideration of the facts and circumstances
11 surrounding these events. The knowledge and intentions of
12 a defendant may only be understood when put into the context
13 of the circumstances surrounding his acts and the inferences
14 which you, the jury, may find can be reasonably drawn
15 therefrom.

16 You would ask yourselves, I think, whether these
17 transactions which you heard testimony about were normal
18 or abnormal, whether they were open or whether they were
19 surreptitious, whether you think the background of the
20 defendant made it likely or unlikely that he fully under-
21 stood what was going on, whether you think the defendant
22 had a motive such as a financial interest in the outcome.

23 These are the kinds of questions, ladies and
24 gentlemen, and of course not the only ones, that you should
25 ask yourselves in order to determine the knowledge and

1 intentions of Mr. Flores, to determine whether you find
2 that he had a criminal intent here.
3

4 Of course I don't suggest any answers to
5 these questions, nor are they the only ones you should
6 ask yourselves, because after all, in your own daily
7 lives you are continually called upon to use your common
8 sense and experience to determine from the acts or state-
9 ments of others what their real intentions and purposes
10 are, and please do the same thing here with respect to
11 Mr. Flores.

12 Here you will recall the testimony of the Spanish
13 police inspectors Lara and Caro regarding Mr. Flores' detention
14 in Spain in March 1973, and that following his arrest his
15 hotel room was searched and they found a French passport in
16 the name of somebody, Casimir Ducodas, or something like that,
17 and other items which were received in evidence as Exhibits
18 44, 44A, 44B, and 44F.

19 Then Agent O'Neill of the Drug Enforcement Ad-
20 ministration testified that he accompanied the defendant
21 on his return from Madrid, Spain, to New York, in January
22 1976, and then in the course of the plane trip, according
23 to O'Neill, Mr. Flores stated he had planned to leave
24 Spain and go to France, England, Japan, and South Africa,
25 as I remember it. Of course, this evidence has no

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2 relevance as to the narcotics conspiracy. However, the
3 Government contends, and the defendant denies, that Mr.
4 Flores fled the country and used false identification
5 papers while he was in Spain, and that on the trip back
6 to the United States, that his statements to O'Neill indi-
7 cated that he intended to continue his flight to these
8 other countries.

9 So the testimony of the Spanish inspectors
10 and the testimony of O'Neill, if you believe it, may be
11 considered by you as circumstantial evidence indicating
12 consciousness of guilt of Mr. Flores, and for that reason
13 you may consider it in determining his knowledge and intent
14 at the time of the narcotics conspiracy.

15 In considering the evidence which you have
16 heard, ladies and gentlemen, bear in mind that the law
17 recognizes two types of evidence, direct evidence and
18 circumstantial evidence. Direct evidence is testimony
19 of a witness who personally observed a transaction or
20 participated in the activity he is describing. Circum-
21 stantial evidence consists of circumstances from which
22 the jury may infer by a process of reasoning certain facts
23 which are sought to be established as true. A classic
24 example of circumstantial evidence, you go home to your
25 apartment or your house one day, and you walk in and some-

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body is looking at television and they look at you and they notice that your hat and coat are wet. They look at you and they say, "It's raining outside." They haven't looked outside to see that it is raining. They have looked at your wet hat and coat and by a process of reasoning, seeing you come in with a wet hat and coat, they reason it is raining outside.

Well, that is the classic example of circumstantial evidence, and of course there is circumstantial evidence in this case.

Both direct evidence and circumstantial evidence are good evidence, and no greater degree of certainty is required when the evidence is circumstantial than when it is direct. In both cases, you must be convinced beyond a reasonable doubt of the guilt of the defendant. And different inferences may be drawn from the evidence, whether it is direct or circumstantial.

The Government may ask you to draw one set of inferences while the defendant asks you to draw another; but it is for you, the jury alone, to determine what inferences you will draw from the evidence and what facts you find to have been proven. Of course these inferences must be reasonable inferences on the evidence. They must not be speculative.

1
2 Now ladies and gentlemen, you, the jury, are
3 the exclusive judges of the credibility of the several
4 witnesses who appeared during the trial. There was a
5 great deal of discussion about the testimony during the
6 summations yesterday, but you are the exclusive judges of
7 the credibility. I know you gave careful attention to the
8 testimony of all of the witnesses, and you will subject that
9 testimony to the same standards whether they were called
10 by the Government or whether they were called by the
11 defendant; and of course, it is the quality of the testimony,
12 not the quantity, the quality of the testimony that is
13 important. The testimony that you believe presents the
14 true picture of what happened.

15 How do you determine the credibility of these
16 witnesses, ladies and gentlemen? Here again, use your
17 plain, everyday common sense. You saw them testify. How
18 did their stories impress you? Did you think they were
19 testifying frankly, candidly, and fairly? So apply your
20 common sense and experience just as you do in determining
21 an important matter in your own lives when you are called
22 upon to decide whether or not you have been given a true
23 picture of a given situation.

24 I think you would consider a witness' demeanor, you
25

1 mbb-12

2 would take into account his background, his occupation, you
3 take into account his prior criminal record, and of course
4 there were several witnesses here who had such records.

5 You consider a witness' candor or lack of it,
6 his possible bias, his means of information, and the
7 accuracy of his recollection; and you consider whether a
8 witness' testimony is supported or whether you think it is
9 contradicted by other credible testimony or circumstances.
10 And you consider whether a witness has an interest in the
11 case.

12 For example, you recall Agent O'Neill testified,
13 of the Drug Enforcement Administration, and so did Robert
14 Prezioso. They are law enforcement officers. Well,
15 law enforcement officers have an interest because they
16 have an interest in prosecuting people whom they think have
17 violated the law. Of course, this doesn't mean that
18 a witness would falsify or mislead you because he has an
19 interest. It is merely a factor which you, the jury, are
20 entitled to consider.

21 Then you will recall there was testimony of
22 the Government's witnesses, Rimbaud, Taillet, and Terry
23 Paul Jones. That testimony was discussed at great
24 length yesterday. Remember, ladies and gentlemen, the
25 Government frequently has to use the testimony of accomplices

1 mbb-13

2 or conspirators in this type of case. It has to use
3 people who have pleaded guilty, who have criminal records,
4 sometimes the Government really has no choice; but
5 on the other hand, you must consider the testimony of these
6 three witnesses with extreme care. You may consider
7 whether they testified for the Government in the hope
8 of leniency or any other motive, and how much that might
9 have affected their testimony.

10 The need of care is especially great if you
11 find that the testimony of any of these witnesses is
12 not corroborated by any other evidence. The testimony
13 of an accomplice or a co-conspirator by itself may be
14 sufficient to convict the defendant if you believe it, and
15 it convinces you of the guilt of a defendant beyond a
16 reasonable doubt; but in considering that testimony, bear
17 in mind any motive which you think they may have had in
18 testifying for the Government, such as arrangements with
19 the Government; and subject their testimony to close and
20 careful scrutiny.

21 A witness may be discredited or impeached by
22 contradictory evidence or by evidence that at other times
23 and other places he made statements inconsistent with
24 his present testimony, and if you find that any of these
25 witnesses have been impeached or discredited, you may

1 mbb-14

2 give their testimony such credibility as you find it
3 deserves. If you find that a witness has testified
4 falsely to you, you can reject all the testimony of that
5 witness or you can accept part of that witness' testimony
6 if you find it reliable, and you may reject the rest.

7 Mr. Flores, the defendant, did not testify
8 during the trial; and you will recall I have told you that
9 the Government here has the burden of proving Mr. Flores'
10 guilt beyond a reasonable doubt; so the fact that Mr. Flores
11 didn't testify must not be considered by you as any evidence
12 against him, nor may you draw any inference unfavorable to
13 him by reason of that.

14 Please don't let the fact that he didn't
15 testify enter into your deliberations in any way. This is
16 because the Government has the burden of proof, the burden
17 of proving the guilt of Mr. Flores beyond a reasonable
18 doubt. Mr. Flores is not required to prove his innocence.

19 When you retire to the jury room, ladies and
20 gentlemen, you have the right to see any of the exhibits
21 which were received during the trial. If you want to look
22 at them just let the marshal know, and they will be sent
23 in to you. When you deliberate, ladies and gentlemen, please
24 listen to the opinions of your fellow jurors as well
25 as seek an opportunity to express your own view. A jury

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deliberation is one where everyone expresses their views, exchanges views, and please don't be afraid to change your original views because of prior opinion or stubbornness or any other reason at all, if after discussing the issues with your fellow jurors you become convinced that your original view was wrong.

But on the other hand, ladies and gentlemen, never surrender your conscientious convictions about the case. Never surrender that because you are outvoted or because of any other reason at all; and you will endeavor to arrive at a verdict here providing you do this consistent with the conscientious convictions of all of you.

It is important, both to the Government and to Mr. Flores, that this case be decided by you. Your verdict here must be a unanimous verdict, a verdict joined in by each of you representing each of your conscientious convictions.

And if after reviewing the evidence you should find the defendant here is not guilty, you must not hesitate for any reason to render a verdict of not guilty; but on the other hand, if you find after considering the evidence and these instructions, that the law has been violated by the defendant, as charged, you must not hesitate

1 mbb-16

2 to render a verdict of guilty because of sympathy or
3 any other reason at all.

4 You must not consider the question of possible
5 punishment of the defendant in case you find him guilty.
6 The duty of punishment rests with the Court, and it must
7 not enter into your deliberations in any way. You must
8 not allow it to affect you or make you seek to avoid the
9 performance of an unpleasant task.

10 In conclusion, ladies and gentlemen, I am
11 sure that if you listen to the views of your fellow jurors,
12 and if you apply your common sense, you will reach a
13 fair verdict, and I remind you that it must be rendered
14 without fear, without favor, without prejudice, and without
15 sympathy.

16 Finally I just want to remind you that
17 although there are a number of defendants that I have reviewed
18 with you, consider only the guilt of the defendant Flores,
19 and you must find here that there was a conspiracy,
20 and that Mr. Flores was a member of that conspiracy
21 after September 3, 1970, and your verdict here will be
22 either guilty or not guilty.

23 All right counsel, come forward, please.

24 (At the side bar.)

25 THE COURT: Mr. Flannery, when you produce

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THE COURT: Which letter?

MR. SHAW: Not about the ashtrays, about the passport. It doesn't say "application," Judge. It says in the letter "passport."

THE COURT: All right. Just relax and I will get the jury in and I will cover this.

All right, let's go on.

MR. SHAW: Your Honor, I don't want you to ask the jury anything about what the letter means. Just the letter should be read into the record.

THE COURT: All right.

(In open court, jury present.)

THE COURT: Ladies and gentlemen, I have received two notes from you. The first one is three more ashtrays, please. We will get you three more ashtrays, I hope.

In the second note you asked first of all transcript of Segura testimony, transcript of Taillet testimony, transcript of Rimbaud testimony. Now, there is no procedure under which I can send that in to you. It is 11:35 A.M. But I can have the reporter read the transcripts to you, and of course with respect to Taillet and Rimbaud, they are very long indeed. It will take a very long time and I would like to suggest that you think about that a little further, and then if there are any particular

1 mbb-27

2 parts that you think are interesting to you, let me
3 know, and we can have that part read. Of course, if you
4 wanted the whole business, we would be here a long, long
5 time.

6 I wish you would think about it and let me
7 know what you want on that.

8 The next item in your note is all of Flores'
9 passports under various names and applications. I have
10 asked the lawyers to marshal those exhibits and they will
11 be sent in to you.

12 The next item is Segura's passport under
13 false name. Now, there wasn't any passport of Segura
14 received in evidence. There was a passport application
15 received in evidence. Is that what you want? Is it the
16 application?

17 (Several jurors responded in the affirmative.)

18 THE COURT: All right, that will be sent in
19 to you.

20 Finally you want the hotel records from
21 France, the ones that were received in evidence, and you
22 will receive those. And I will have them all sent in to
23 you.

24 Have you got them?

25 MR. FLANNERY: Yes.

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THE COURT: Give them to the clerk and the clerk will give them to the foreman.

THE COURT: All right. Why don't you retire again and think about it if you want all this testimony, what parts, or if you would like part of the testimony. Will you do that?

All right, thank you very much.

(The jury retired to continue deliberations at 11:40 A.M.)

MR. SHAW: Your Honor, I object to the way that the hotel records were given to the jury. They were clipped together by Mr. Flannery and it is not the way they were. They were separate exhibits. The exhibits were clipped together in a specific manner by Mr. Flannery. I think it was improper.

THE COURT: All right.

(Recess.)

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MR. FLANNERY: Certainly not the question that I couldn't get an answer to.

THE COURT: All right, 884, lines 4 to 9.

All right.

MR. FLANNERY: Thank you, your Honor.

(In open court; jury present.)

THE COURT: Ladies and gentlemen, I have received your note which requests Segura's testimony and Taillet's testimony that he saw Flores at the house in '71 when he did not at first recognize him; any references to Segura in Rimbaud's testimony; if any. We will start off, and I will ask the reporter to read Segura's testimony, and then we will follow with the others and if at any time you find that you have heard what you want to hear and you have heard enough, raise your hand when you want to stop. I will ask the reporter to read Mr. Segura's testimony.

(Record read.)

THE COURT: Now we will proceed to Taillet's testimony that he saw Flores at the house in '71 and did not at first recognize him.

(Record read.)

MR. FLANNERY: I am sorry, your Honor, I didn't think you were reading any of this. There is nothing on 858 and 859.

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THE COURT: I think that is right. I don't think there is any reference to identification.

MR. FLANNERY: I am sorry to interrupt the reading.

THE COURT: All right. I think we might proceed to 869.

MR. SHAW: Your Honor, I don't understand what happened.

THE COURT: All right. I do.

MR. SHAW: Your Honor, was page 857, line 18 read?

THE COURT: Yes.

MR. FLANNERY: That is correct, that was.

(Record read.)

JUROR NO. 1: It is enough, your Honor.

THE COURT: I can't hear you.

JUROR NO. 1: The jury thinks it is enough.

THE COURT: All right. Well, thank you very much.

There is one other item you had, that is any references to Segura in Rimbaud's testimony, if any. We did find one reference to Mr. Segura in Rimbaud's testimony, and I ask the reporter to read that to you, page 255.

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(Record read.)

THE COURT: That was the only reference in
Mr. Rimbaud's testimony to Segura.

Ladies and gentlemen, that is what you want,
I hope. You may retire.

(At 1:00 P.M. the jury retired to continue
deliberations.

(Court Exhibit 6 marked.)

(Recess.)

(continued on next page.)

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1 rdrf 2

2 Mr. Reporter, when the jury comes out, you will
3 read 1079, line 17, to 1080, line 5. Here it is and I
4 will ask you to read it.

5 (In open court, jury present.)

6 THE COURT: Ladies and gentlemen, I have
7 received your note which reads, "Could you please reread the
8 part of Segura's testimony where he was asked he went to
9 France to meet Flores in the cross examination?"

10 That was the examination by Mr. Flannery. I
11 have asked the reporter to please read from page 1079, line
12 17.

13 (Testimony read by the reporter.)

14 THE COURT: Is that the testimony you wanted?

15 JUROR NO. 8: There was a question did you go to
16 France to meet Mr. Flores?

17 THE COURT: Mr. Flannery, do you find that?

18 MR. FLANNERY: There isn't a question like that
19 in cross.

20 MR. SHAW: Line 10, page 1080.

21 THE COURT: Let me see it.

22 (Pause.)

23 THE COURT: There was another passage here where
24 he was asked, again on cross examination:

25 "Q You went to Paris to bring money to Flores so

1 rdrf 3

2 he could continue to flee, is that correct?

3 "A No, that is not correct. That is not true at
4 all."

5 What was the one that you wanted?

6 JUROR NO. 7: The question is whether he went to
7 Paris to see Mr. Flores.

8 THE COURT: I don't think there was any such.

9 Was there any testimony like that? I think the
10 testimony was he went to France and when he got there he
11 saw Flores.

12 JUROR NO. 7: Is there a question Mr. Flannery
13 asked where he is known under the name of Serrano?

14 MR. FLANNERY: There might be, your Honor.

15 THE COURT: I think it is on page 1082.

16 MR. FLANNERY: 1082, line 8, that entire section
17 to the end discusses him going to Paris.

18 THE COURT: There is a question at line 15:

19 "Q Did you visit him at the hotel in Paris where
20 he was staying under the name Serrano?"

21 Is that what you had in mind?

22 "A Yes, I did."

23 "Q So you remember his name, Serrano?

24 "A No. I am saying I did visit him at the hotel."

25 MR. FLANNERY: Line 8, the question and answer

1 rdrf 4

2 is exactly that question. I hadn't noticed it before, I
3 am sorry.

4 MR. SHAW: I think you should read the next two
5 lines after what you just read.

6 THE COURT: Let's solve this. I am going to read
7 this page. I want to be sure there is no confusion. I
8 will start off this:

9 "Q How many other names have you used besides
10 Segura -- I'm sorry, besides Valentin? That is the only
11 one you used that one time you went to Paris to meet Flores?

12 "A That is true.

13 "Q He was then using his name at that time, was he?

14 "A I didn't ask him that really. You know, we
15 didn't get around to that.

16 "Q Did you visit him at the hotel in Paris where
17 he was staying under the name Serrano?

18 "A Yes, I did.

19 "Q So you do remember his name, Serrano?

20 "A No. I am saying I did visit him at the hotel.

21 "Q You did or you did not visit him?

22 "A I visited him at the hotel. I was not aware of
23 what name he was using then."

24 JUROR No. 9: The point that is confusing is
25 the question that he met Mr. Flores in Paris. The question

1 rdrf 5

2 we have is where it says, did you know his name when you
3 went to meet him at Paris? We wanted to get it clear
4 whether the question was asked did he go there to meet Mr.
5 Flores.

6 THE COURT: I don't think there was any testimony
7 that this trip was just to meet Mr. Flores.

8 JUROR NO. 9: The question was did you --

9 THE COURT: The question is, "Did you visit him
10 at the hotel in Paris where he was staying under the name
11 Serrano?"

12 JUROR NO. 8: Before that isn't there a part
13 that says did you go to Paris to meet Mr. Flores?

14 MR. FLANNERY: Line 8 is the question they are
15 referring to.

16 THE COURT: Line 8, what page?

17 MR. FLANNERY: 1082 is the question, the first
18 question and answer you read.

19 THE COURT: Well, I read that.

20 MR. FLANNERY: They want you to read it again.

21 THE COURT: This is about the name Valentin.

22 "Q That is the only one you used that one time
23 you went to Paris to meet Flores?"

24 JUROR NO. 9: This is the statement that is
25 confusing. The statement when he went to Paris to see

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1 rdrf 6

2 Flores.

3 THE COURT: That is a question by Mr. Flannery
4 and the answer "that is true."

5 JUROR NO. 9: The thing that is confusing, did
6 you go to Paris to meet him? Is the answer did he go to
7 meet him?

8 THE COURT: All I can do is read it to you,
9 ladies and gentlemen.

10 "How many other names did you use besides Segura --
11 I'm sorry, besides Valentin? That is the only one you used
12 that one time you went to Paris to meet Flores?"

13 "A That is true.

14 "Q He was then using his name at that time, was he?

15 "A I didn't ask him that really. You know, we didn't
16 get around to that."

17 JUROR NO. 9: This is the answer that confused us.

18 THE COURT: I can't help you on that.

19 JUROR NO. 9: He asked him is that the name when
20 you went to Paris to meet Flores?

21 THE COURT: The testimony is that was the name he
22 used when he went to Paris.

23 JUROR NO. 9: Did he admit deliberately going
24 there to meet Flores?

25 THE COURT: That is the only question asked

1 rdrf 7

2 by the United States Attorney. I can't give you any more
3 than that.

4 JUROR NO. 9: We wanted to be sure there was
5 no other question as to whether he went to Paris to meet
6 Flores. As to whether he admitted going to Paris to
7 meet Flores or not.

8 THE COURT: There is no testimony he went to
9 Paris to meet Flores. The testimony is he went to Paris
10 and there he met Flores.

11 MR. FLANNERY: I object to your instruction on
12 the question. I think the jury has to determine what it
13 means.

14 THE COURT: That is the best I can give you.

15 JUROR NO. 8: Could you please read it again,
16 after Valentin, did you go to Paris to meet with Flores.
17 And I want everybody to please listen.

18 "Q That is the only one you used that one time you
19 went to Paris to meet Flores?

20 That is the question. The answer is:

21 "A That is true.

22 "Q He was then using his name at that time, was he?

23 "A I didn't ask him that really. You know, we
24 didn't get around to that."

25 MR. SHAW: Your Honor, could you read 1080, line 6

1 rdrf 8

2 to line 14?

3 MR. FLANNERY: That is a different question, your
4 Honor.

5 THE COURT: I think that is a different question.

6 MR. SHAW: That deals with whether or not he
7 went to Paris.

8 MR. FLANNERY: We shouldn't have a discussion
9 about it in front of the jury.

10 THE COURT: Ladies and gentlemen, that is the
11 best I can do for you. I hope that answers your
12 question.

13 (Jury continues deliberations at 1:32 p.m.)

14 (Recess.)

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Mr Harris Room 629A 65
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

ANTONIO FLORES,

Defendant.

73 Cr. 19
4411.2

HON. ROBERT B. FISKE, JR.,
United States Attorney for the
Southern District of New York
Attorney for the United States of America
JIFFEY HARRIS, ESQ.,
Assistant United States Attorney
Of Counsel

DILLER, SCHICKLER & ASHNESS, ESQS.
345 Park Avenue, New York, N.Y. 10022
Attorneys for Defendant
By HOWARD J. DILLER, ESQ.

MEMORANDUM

FORGAL, D. J.

Defendant Antonio Flores is charged with conspiracy to transport and sell narcotic drugs from January 1, 1968 through April 30, 1971 in violation of Sections 173 and 174 of Title 21 of the United States Code. On January 8, 1973 an indictment was filed and a bench warrant was issued for the defendant, who was a fugitive. On March 23, 1973, the defendant was arrested in Barcelona, Spain and imprisoned in Barcelona's Men's Prison. The United States

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sought the defendant's extradition from Spain and a hearing was held in Barcelona on November 13, 1973. An extradition order was granted the same day in a decision by the Provincial Court of Barcelona. For reasons not entirely clear from the record, the defendant was not returned to the United States until January, 1976.

The defendant now moves to limit the Government's introduction of certain evidence at trial on the grounds that the extradition order is "... limited solely and exclusively to the alleged crime of conspiracy to violate Sections 173 and 174 of Title 21 of the United States Code, ... and further expressly limited with respect to time to the acts committed between September 3, 1970 and April 30, 1971, excluding any previous or subsequent acts." U.S. Dep't of State, Division of Language Services, Translation of Limited Proceedings No. 53 of 1973, Barcelona Court No. 6, Extradition, dated December 7, 1973, at 7 (hereinafter "Limited Proceedings No. 53 of 1973"). Defendant contends that the Government may prosecute him only as to alleged violations within the above circumscribed time period and may not introduce evidence of acts prior to September 3, 1970 to prove the existence of the conspiracy or that the defendant was a member thereof since the "... extradition is contingent upon the formal promise of the United States Government that the aforesaid person will not be prosecuted for previous offenses or offenses foreign to this extradition request unless he expressly consents to such prosecution." Id.

A review of the decision of the Barcelona Court granting the extradition order indicates that defendant's extradition is

limited in time to insure that the defendant is tried for an offense which was extraditable under the Treaty of June 15, 1904 ("Treaty of 1904"). The Barcelona Court, relying on the Treaty of 1904 and general principles of international law, found that although the original text of the Treaty of 1904 did not include the crime of conspiracy to traffic in narcotic drugs as an extraditable offense, the Treaty of 1904 was supplemented in 1970 by the Convention for the Suppression of Illicit Traffic in Dangerous Drugs, signed at Geneva on June 26, 1936. This Convention, which entered into force in Spain on September 3, 1970, specifically includes the crime of conspiracy to traffic in narcotic drugs as an extraditable offense. Since the Barcelona Court found the provisions of the 1970 Convention to be binding on Spanish courts, the extradition order was drafted to comply with its effective date: namely, September 3, 1970. See Limited Proceedings No. 53 of 1973, supra at 4.

Under the terms of the extradition order, the Government will have the burden of proving beyond a reasonable doubt that the conspiracy charged in the indictment was in existence between September 3, 1970 and April 30, 1971 and that the defendant was a member of it during this period. However, the Government may introduce evidence of defendant's prior acts and conversations which may be relevant to defendant's knowledge and intent with respect to acts committed during this period. Such evidence, if relevant, may be received unless offered solely to prove criminal character. United States v. Papadakis, 510 F.2d 237, 294 (2d Cir.), cert. denied, 421 U.S. 950 (1975); United States v. Deaton, 381 F.2d 114 (2d Cir.

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1967); Fed. Rules Evid., Rule 404(b); see also Fed. Rules Evid.,
Rule 105, 801(d)(2), 803(3).

Defendant's motion is disposed of accordingly.

It is so ordered.

Dated: New York, N.Y.
March 27, 1976

DUDLEY B. BONSAI

U. S. D. J.

New York, February 17, 1977

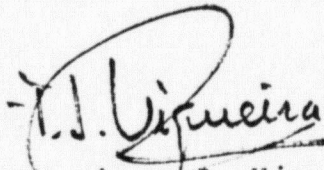
Stuart R. Shaw, Esq.
600 Madison Avenue
New York, N.Y. 10022

Dear Sir:

This is to certify that on April 7, 1976 the Embassy of Spain issued a formal letter of protest to the United States Department of State, a true copy of which is annexed hereto.

This is to further certify that on September 29, 1976, the Embassy of Spain issued a formal letter of protest to the United States Department of State, a true copy of which is annexed hereto, together with a certified translation of same.

That I forward this certification to you with knowledge that it will be submitted to the U.S. Court of Appeal for the Second Circuit as a part of the appeal submitted for Mr. Antonio Flores.


Francisco J. Viqueira
Deputy Consul

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Embajada de España

MA/hr
Number 38

DEPARTMENT OF STATE

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LOCAL ADVISER

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DEPARTMENT OF STATE

The Embassy of Spain presents its compliments to the Department of State and has the honor to inform that in reference to the judicial process by the U.S. District Court, Southern District of New York, against the North American citizen Antonio Flores, whose extradition was approved by Spain, by judicial decree from the "Audiencia Territorial" of Barcelona, Spain, The Honorable Judge Dudley B. Bonsal has granted the petition of the U.S. Attorney for the Southern District of New York allowing the presentation of acts and evidences committed prior to September 3, 1970.

Inasmuch as the judicial decree by the Spanish judicial authorities conditioned the extradition of the said North American citizen to be judged only and exclusively for the assumed offense of conspiring to brake the Sections 173 and 175 of the Title 21 of the U.S. Law Code and only by offenses committed during the period between September 3, 1970 and April 30, 1971, conditions formally assured by the U.S. Government in the Verbal Note No. 135 dated February 13, 1974 issued by the U.S. Embassy in Madrid, the Embassy of Spain requests the Department of State to inform the Department of Justice about the status of the order to ensure the fulfillment of the conditions above mentioned in the above.

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Attached it is included the judicial decree of extradition, the Verbal Note Nr. 136 as well as their translations and the decision of the U.S. Judge of the U.S. District Court.

The Embassy of Spain avails itself of this opportunity to renew to the Department of State the assurances of its highest consideration.

Washington, D.C., April 7, 1976

Department of State
Special Consular Services
Washington, D.C.



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No. 280

The Embassy of Spain presents its compliments to the Department of State and refers to Verbal Note number 38 dated April 7, 1976 and the Department of State answer dated June 1st, 1976. The Embassy is under the obligation to express its concern as to the manner in which the trial of Mr. Antonio Flores was conducted and whose extradition was granted by the judicial authorities of Spain to be tried in the United States of America only for acts committed during the period between September 3, 1970 and April 30 1971.

Without considering the discussion of whether the admission by the District Court of evidence concerning Mr Flores' illegal activities prior to September 3, 1970 to show his intentions with respect to prove his illegal conduct within the period (September 3 1970 to April 30 1971), would constitute a breach of the extradition agreement, the Embassy of Spain wishes to insist based on documents in its hands, that the Judge of the Southern District Court of the United States in New York during the trial of August 26 1976 charged the Jury as follows: "The grand jury charges from on or about the first day of January 1968 and continuously thereafter up to and including the 30th day of April 1971". The fact that the charges included acts committed during the period of January 1st. 1968 and September 3, 1970, evidently contradicts the terms of the extradition decree of the Audiencia of Barcelona and Verbal Note number 126 of February 13 1974 of the Embassy of the United States of America in Madrid, Spain.

The Embassy of Spain requests the cooperation of the Department of State to secure the compliance of the abovementioned

.../..

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decree and Verbal Note.

The Embassy of Spain avails itself of this opportunity to renew to the Department of State the assurances of its highest consideration.

Washington, D.C. September 29, 1976.

Department of State
Special Consular Services
Washington, D.C.

(There is a seal reading:
"Embassy of Spain
Washington
Consular Section")

I certify that the above is an exact translation to the best of my knowledge and belief of the document in Spanish attached to this translation.

Maria E. Portela
Legal Translator
SPANISH AMERICAN TRANSLATION BUREAU

State of New York)
) S.S.
County of New York)

Subscribed and sworn to before me, a
Notary Public in and for said County,
this 8th day of October, A.D. 1976

Fernando E. Alvarez
Notary Public

FERNANDO E. ALVAREZ
NOTARY PUBLIC, State of New York
No. 41-5063425
Qualified in Queens County
Certificate filed in New York County
Commission Expires March 30, 1978

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los actos comprendidos entre el 1 de Enero de 1970 y el 3 de Septiembre de 1970 contradictorio, evidentemente, los términos de la sentencia de extradición de la Audiencia de Barcelona y los de la Nota Verbal de la Embajada de los Estados Unidos de América en Madrid, España, núm. 126, de 12 de Febrero de 1971.

La Embajada de España desea la cooperación del Departamento de Estado para asegurar el cumplimiento de los recién citadas sentencia y Nota Verbal.

La Embajada de España aprovecha esta oportunidad para renovar al Departamento de Estado el testimonio de su más alta consideración.

Washington, D.C., 29 de Septiembre de 1976

Departamento de Estado
Servicios Consulares Especiales
Washington, D.C.



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HR/hr
HR. 280

La Embajada de España saluda atentamente al Departamento de Estado y con referencia a su Nota Verbal número 28 de 7 de Abril de 1976 y a la contestación del Departamento de Estado de 1 de Junio de 1976, se va en la obligación de expresar su preocupación por los términos en que se ha seguido juicio contra el Sr. Antonio Flores cuya extradición había sido concedida por las autoridades judiciales españolas para ser juzgado en los Estados Unidos de América solo por actos cometidos durante el período comprendido entre el 3 de Septiembre de 1970 y el 30 de Abril de 1971.

sin entrar en la discusión de si el uso por el Tribunal del Distrito de pruebas relativas a las actividades ilegales del Sr. Flores anteriores al 3 de Septiembre de 1970, para demostrar su intención con respecto a actos ilegales posteriores a dicha fecha constituye un quebrantamiento de la sentencia de extradición, la Embajada de España quiere insistir en que, según la documentación que obra en su poder, el Juez del Tribunal del Distrito Sur de Nueva York, en la audiencia celebrada el 26 de Agosto de 1976 al instruir al Jurado dijo textualmente: "The indictment reads, "The grand jury charges from on or about the first day of January 1968 and continuously thereafter up to and including the 30th day of April 1971" lo que, al incluir dentro de la acusación

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DEPARTMENT OF STATE
DIVISION OF LANGUAGE SERVICES

(TRANSLATION)

LS NO. 39357 - B

Limited Proceedings No. 53 of 1973
Barcelona Court No. 6
Extradition

I, José Joaquín Sendra Espla, Clerk of the Fourth Section,
Provincial Court of Barcelona, hereby certify:

That in the record of the extradition proceedings, a continuation
of the course of the extradition of United States citizen Antonio
Flores, requested by the Embassy of the United States of America at
Madrid, corresponding to Limited Proceedings No. 53 of 1973 of Examin-
ing Court No. 6, Barcelona, the following decision was handed down:

Decision. Judge Tomás González Román Fernández, Presiding.

Judges: Eloy Mandaña Domínguez and Carlos Jou Juanola. Barcelona,
November 13, 1973.

WHEREAS:

This extradition proceeding concerning United States citizen Antonio
Flores, requested by the United States Embassy at Madrid, was brought as
the result of a resolution approved in the Council of Ministers on
July 5, 1973. A warrant of arrest for Antonio Flores had been issued
by the United States District Court for the Southern District of New York
on January 8, 1973, for the crime of conspiracy to transport and sell
narcotic drugs in the United States, committed between January 1, 1968
and April 30, 1971, and another warrant of arrest, dated April 5, 1973,
had been issued by the Grand Jury of the United States District Court
for the Eastern District of New York, for the crime of conspiracy to
receive, conceal, buy, sell, and facilitate the transport and conceal-

ment of heroin and cocaine, narcotic drugs, after they had been brought illegally to and imported into the United States, which crime was committed between January 1 and August 31, 1968, approximately;

Antonio Flores, the fugitive, was arrested on March 23, 1973, and placed in the Barcelona Men's Prison. He stated before the Examining Court that he intended to oppose extradition because the charges brought against him by the New York courts were false;

Antonio Flores, the fugitive, also known as Antonio-Javier Flores Serrano, uses the name of Luis Serrano Flores as well;

In conformity with the provisions of Article 17(2) of the Extradition Law of December 26, 1958, Examining Court No. 6 of Barcelona referred the case to this court, where it has been handled in accordance with the aforesaid law; the hearing was set for November 9, 1973, in the presence of the Government Attorney, the defendant, the defense counsel, and the prosecutor. Antonio Flores, the fugitive, stated that he had nothing to say; the Government Attorney spoke and requested that the extradition sought by the United States court be granted, but only after the person concerned shall have served any sentence imposed on him for crimes committed in Spain. The defense counsel also addressed the court and requested that the extradition not be granted;

There is no doubt about the precedence of the sources of law that govern extradition matters, as the defendant himself recognizes in his brief filed on July 16 for appeal of amendment of the decision of the judge who ordered his detention. Those sources are the international treaties which govern the conditions that must exist with respect to the proceeding if they contain regulations regarding it, and only when there

are no such regulations or when there is some omission in them will the Spanish Law of December 26, 1958, be applied, as Article 1 of that Law provides; therefore, as will be examined later, the reasons stated in opposition may be rejected;

The principal objection stated is based on the fact that the charges against the person sought are related to the period between January 1968 and April 30, 1971. The defense argument concludes with the statement that at that time neither the [Extradition] Treaty of 1904 nor the Treaty of 1970, now in force, was applicable. With respect to the Extradition Treaty of May 29, 1970, between Spain and the United States of America, in force since June 16, 1971, that statement is correct, and therefore the objection based on the lack of retroactive effects of the said Treaty is pertinent and admissible; however, with respect to the Treaty of June 15, 1904, ratified by Spain April 6, 1908, the argument is not admissible because, although the objection is correct in that the said Treaty does not include the offenses referred to as drug traffic, it is admissible only in part or with time limitations, inasmuch as the Convention for the Suppression of Illicit Traffic in Dangerous Drugs, signed at Geneva on July 26, 1936 and ratified by the United States in 1947, is not, as alleged, a mere statement of principles or assumption of commitments or obligations without any effect whatsoever unless developed and specifically included in the domestic law of the signatory; instead, that multilateral Convention, obviously directed at international control of the drug traffic, acquired full force in our country upon ratification by Spain on September 16, 1970, and although it recommends or requires that certain aspects be formulated a posteriori by domestic law, there is no

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doubt that, from the time of its entry into force, on September 3, 1970, it had the force of law and its application was an inescapable obligation of the courts. It therefore follows that the aforesaid Treaty of 1904 was supplemented by the provisions of Articles 2 and 9 of that Convention; Article 9 states that "the offenses set out in Article 2 shall be deemed to be included as extradition crimes in any extradition treaty which has been or may hereafter be concluded between any of the High Contracting Parties" and Article 2 includes conspiracy to commit any of the offenses specified in paragraph (a) thereof related to the manufacture of or traffic in narcotic drugs; therefore, these provisions must be applied in the assumption that the Treaty of 1904 is here concerned;

If it is concluded from the foregoing that the Treaty of 1904 is applicable, it is also concluded that some limitations must be clearly stated, owing to the charge that the fugitive conspired with other persons to receive, conceal, buy, sell, or facilitate the transport to the United States of an undetermined quantity of heroin or other drugs during the approximate period of January 1968 to April 30, 1971, as evidenced by several acts committed by Antonio Flores himself or his co-conspirators; ^{it} and/is concluded from the foregoing that the request for extradition must be totally rejected with respect to the charges brought against him before the United States District Court for the Eastern District [of New York] because they only include acts committed between January and August 1968, that is, outside the effectiveness of the Treaty of 1904 taken in conjunction with the aforesaid Convention; and with respect to the charges brought against him before the Court of the Southern District of New York, the extradition must be granted, but expressly limited to activities from September 3, 1970 to April 30, 1971, all previous activities being excluded;

The other arguments presented in support of the objection refer to the alleged noncompliance with the rules governing the detention of the person sought, whether those of the Treaty of 1904 are understood to be applicable or those of the Spanish law of December 26, 1958. With respect to this, it must be stated that the admissibility or inadmissibility of extradition is not affected by the provisions of either agreement because extradition does not depend on whether or not the subject is detained. Moreover, Article 12 of the Treaty of 1904 was not violated because it authorizes detention for a period not exceeding two months so that the requesting government may lay before the judge legal evidence of the guilt of the accused, and that period may be extended during examination of the charges preferred. However, if it is observed that such restrictions are directed to the requesting Government in order to urge it to present its claim in the proper form within a specific period, with the provision that if it does not do so, the person under arrest must be released, and that the mandate of Article 12 is directed to the judge or magistrate, it will be concluded that the arguments in support of the objection are not valid, especially in view of the fact that the United States Government complied with the two-month period by submitting to the Spanish Government, through the proper channels, the request and its supporting documents on April 30, 1973, while the arrest took place on March 23, 1973. Neither has Article 12 of the Spanish law, if applicable, been violated because, apart from the objections that might be made in general to any prolonged detention, our system consists of two phases: the administrative, which is governed by Articles 10 to 15 of that law, and the judicial, covered by Articles 16 to 20 thereof. In the first phase

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there may be normal detention, that is, after the Government has agreed that the procedure is justified (Article 12(3)), as well as the prior or urgent detention referred to in Articles 13 and 14, that is, arrest by government officials, in order to prevent the flight of the alleged criminal, made on the basis of a direct request through diplomatic channels, as in this case, or through administrative channels. In these latter situations, the change of the normal order, by providing for the arrest first, followed by the receipt of the request and the Government's decision, may result in the lapse of the period indicated in Article 13 of the law, but without affecting the admissibility or inadmissibility of the extradition which, as has been stated, does not depend on whether the subject is detained or not; the failure of the foreign government to comply with that period would only cause the person sought to be released; this is implied by the last paragraph of Article 14, whose mandate, it may be observed, is directed to the administrative authorities, who can, moreover, also request justifications or clarifications, pursuant to Article 12, before granting a continuation of the proceeding and turning the arrested person and the certification over to the judicial authority within the 24 hours ordered by Article 15 of the said law, thus beginning the second and last of the two phases;

Neither can the objection be sustained regarding the prior formal promise of the requesting Government because, pursuant to Article 1(1) of the aforesaid Spanish law, treaty provisions are to be given priority application and such a condition is already imposed on the United States Government by Article 4 of the applicable Treaty of June 5, 1904, unless the accused gives his express and voluntary consent;

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Inasmuch as it appears in the record of this case that the fugitive is the defendant in two proceedings for crimes in Spanish territory, one, Summary Proceeding No. 25 of 1973 before Examining Court No. 9 of Barcelona, and the other, a drug possession case before the Examining Court of Logroño, therefore, in addition to the limitations mentioned, it is proper to delay surrender of the person sought until he has discharged his liabilities in Spain, pursuant to Article 8 of the Spanish Law of 1958, he, Antonio Flores, in the meantime remaining in prison at the disposition of this Court.

THEREFORE: In view of the articles and provisions cited and others which are applicable, the Court hereby rules:

1. The extradition of Antonio Flores, also known as Antonio-Javier Flores Serrano, who uses the name of Luis Serrano Flores as well, a United States citizen born in Caguas, Puerto Rico, in 1937, is admissible, and his extradition is granted, at the request of the United States of America, limited solely and exclusively to the alleged crime of conspiracy to violate Sections 173 and 174 of Title 21 of the United States Code, of which crime he is accused before the Court of the Southern District of New York, and further expressly limited with respect to time to the acts committed between September 3, 1970 and April 30, 1971, excluding any previous or subsequent acts. The person named should be delivered up to the requesting country and remain subject to the competent court, and ^{it} is understood that the extradition is contingent upon the formal promise of the United States Government that the aforesaid person will not be prosecuted for previous offenses or offenses foreign to this extradition request unless he expressly consents to such prosecution. The valuables, articles, and money taken from the fugitive shall also be surrendered to the requesting State.

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2. The aforesaid surrender of the fugitive shall be delayed until any liabilities arising from the summary proceedings in process against him in Examining Court No. 9 of Barcelona and the Examining Court of Logroño have been discharged in full, to which end this Court shall be duly informed of the results of those proceedings and in the meantime, the person sought shall remain in detention at the disposition of this Court. An order shall be issued to that effect to the Barcelona Men's Prison and ordering further that this Court be informed of the date on which the aforesaid liabilities are discharged in full so that the appropriate order may then be issued for the aforesaid surrender of the person sought. The money (in dollars) taken from the accused shall be deposited in the Bank of Spain at the disposition of this Court, after a list is made identifying the bills, and the articles and documents shall remain in the custody of the Clerk until the said surrender takes place.

3. The requested extradition of the aforesaid Antonio Flores is denied with respect to the claim of Court of the Eastern District of New York and the charges brought against him before that Court.

A certified copy of this decision shall be transmitted to the Ministries of the Interior and Justice.

The above decision was handed down and signed by the Judges of the Court, whose signatures I hereby certify.

Signed and sealed: Tomás G. Román, Eloy Mondaña. Carlos Jou. Sandra.

In compliance with the above order, I hereby issue and sign this document at Barcelona, December 7, 1973.

[s] Sandra

Approved:
[Signature]
Presiding Judge

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No. 136. Verbal note* - The Embassy of the United States of America greets attentively the Ministry of Exterior Affairs and has the Honor of referring to the #55 Verbal Note of that Department, Ref. 23-Ext-73, dated February 8, 1974, in relation to the extradition of the North America citizen, Antonio Flores. Upon receipt of the aforementioned Verbal Note from the Ministry, the Embassy, made telegraphic contact with the Department of Justice of the United States of America, by way of the State Department in Washington, D.C., to be assured of the formal promise that the Ministry solicited in petition from the Ministry of Justice. The response that just arrived at the Embassy offers the specific assurance on the part of the Department of Justice That Antonio Flores will not be prosecuted in the United States of America for prior infractions or infractions different than those which are concretely referred to by the decision portion of the dictated decree by the Provincial Court of Barcelona dated November 13, 1973.

The Embassy of the United States takes this opportunity to again reaffirm its well considered assurances to the Ministry of Exterior Affairs - Madrid, February 13, 1974."
(emphasis added)

* Translated by Norma Seltzer, Spanish Interpreter for United States District court and State Supreme Court.

TO WHOM IT MAY CONCERN

At the request of Mrs. Stella Gómez de Flores, a Spanish national, living currently at Rosellón No. 21 - Entlo. la, Barcelona (15), Spain, wife of Mr. ANTONIO FLORES SERRANO, a U.S. citizen, I Mr. Alberto López Herce, Consul General of Spain in New York, do hereby declare that the judicial history of Mr. Antonio Flores Serrano's case has been forwarded to the Spanish Embassy in Washington, D.C., by official communication No. 30, on March 29th, 1976, to be transmitted to the State Department of the United States of America, since the Formal Promise of February 13th 1974 by means of Verbal Note No. 136 of the United States Embassy in Madrid to the Spanish Government, has not been honored, -----

New York, N.Y. April 1st, 1976.

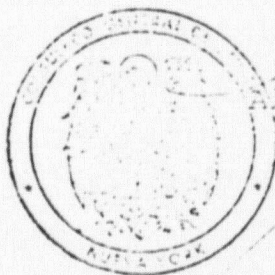
Alberto López Herce
Consul General

Consulado General de España

TO WHOM IT MAY CONCERN

At the request of Mrs. Esther Gómez de Flores, a Spanish national, residing at 432 Olmstead Avenue, Bronx, New York, 10473, wife of Mr. ANTONIO FLORES SERRANO, a U.S. citizen, I, Mr. Alberto López Herce, Consul General of Spain in New York, do hereby declare that the judicial history of Mr. Antonio Flores Serrano's case has been forwarded to the Spanish Embassy in Washington, D.C., by official communication No.30 on March 29, 1976, to be transmitted to the State Department of the United States of America, since the Formal Promise of February 13, 1974 by means of Verbal Note No. 136 of the United States Embassy in Madrid to the Spanish Government, has not been honored. The said protest was transmitted to the State Department by the Spanish Embassy in Washington by official communication No.38.-----

New York, N.Y., June 3, 1976.



Alberto López Herce
Consul General

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STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

MARIA RISSO, being duly sworn, deposes and says: that deponent is not a party to this action is over 18 years of age and resides at 432 Olmstead Avenue, Bronx, New York. That on February 22, 1977 at P.M. deponent served the within Appellant's Brief and Appellant's Appendix by delivering true copies of each on the below named personally:

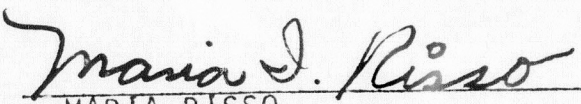
Original and seven copies on:

Clerk
United States Court of Appeals
for the Second Circuit
Foley Square
New York, New York 10007


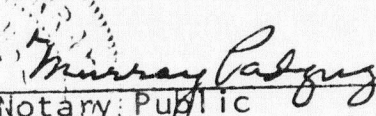
and

one copy of each of the above named Brief and Appendix on:

HON. ROBERT B. FISKE, JR.
U.S. Attorney's Office SDNY
U.S. Courthouse Annex
One St. Andrew's Plaza
New York, New York
Attn: AUSA John Flannery.


MARIA RISSO

Sworn to before me this
22nd day of February, 1977.



Notary Public

MURRAY PADGUG
Notary Public, State of N. Y.
No. 30-2994400 Nassau County
Comm. Exp. March 30, 1977

COPY RECEIVED
FEB 22 1977
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
ROBERT B. FISKE JR.